Lal Singh vs. Union of India
(S.B.C.Writ Petition No.1929/03)

Dated: 17th April,2006.

HON'BLE MR.JUSTICE R.C.GANDHI

Mr.A.K.Singh, for the petitioner.
Mr.Ravi Bhansali, for the respondents.

(ORAL)

The petitioner by means of this petition seeks issuance of writ of mandamus directing the respondents to continue to pay disability pension stopped by the respondents w.e.f. 24.4.1989, alongwith interest on arrears.

The petitioner has averred in the petition that he was enrolled in the Indian Army on 2.11.1971. His services were discontinued by the respondents on 9.10.1972 on medical ground as he was found suffering from disease of DRACONTIASIS. The disability pension was sanctioned and released w.e.f. 9.10.1972 vide PPO No.D/619/73. However, vide letter dated 16.5.1989(Annexure 2) issued to the petitioner, he was informed that since his disability has been re-assessed at 6% to 10% by the Re-Survey Medical Board held by the Military Hospital,Jodhpur, his disability pension has been stopped w.e.f. 24.4.1989. The petitioner preferred an appeal against the discontinuation of the disability pension before the Appellate Authority which has been rejected on 12.3.2001. It is further averred that once the disability pension is granted, same cannot be withheld or discontinued because of the circulars issued by the respondents and in that regard he has relied upon the judgment of this Court delivered in

case title **"Rampal Singh vs. Union of India & Ors."**, reported in WLC (UC) Raj. 2003, 75.

The respondents have filed reply stating therein that the petitioner was invalided out of service by an Invaliding Medical Board (for short "the Board" hereinafter) on 8th October,1972 on completion of 11 months and 15 days of service under Rule 13(3) Item III(iii) of the Army Rules, 1954. The Invaliding Medical Board of the petitioner was held at Military Hospital, Ahmednagar on 29th August, 1972 and the disease Dracontiasis 125(C) with which the petitioner was suffering was regarded as not attributable to but aggravated by stress and strain of military services. The disability of the petitioner was assessed by Re-Survey Medical Board as less than 20%(8 to 14%). Accordingly, the claim of the petitioner for disability pension is sent to the PCDA(P) Allahabad which was the final sanctioning authority, who in turn accepted the disability as 20% for two years and granted disability pension @ Rs.40/- per month from 9th October, 1972 to 28th August,1974. The petitioner was thereafter directed to appear before the Re-survey Medical Board on 28.8.1974, 28.8.1976 and 24.4.1979. The petitioner was again examined by the Board on 17.1.1989 at Military Hospital,Jodhpur. The Board assessed the disability of the petitioner at 20% permanently. Though, re-assessment of the disability pension was processed to PCDA (P), Allahabad vide letter dated 3rd February,1989 which assessed the disability of the petitioner at less than 20% (i.e. 6-10%) for ten years and dis-continued the disability pension w.e.f. 24.4.1989. The petitioner again preferred an appeal against the said assessment before the Ministry of Defence which has been rejected.

Heard learned counsel for the parties and perused the record.

The admitted facts of the case are that the petitioner was granted disability pension on assessing his disability more than 20% in the year 1972. His disability was thereafter re-assessed during the years from 1974 to 1979. The disability being continuing more than 20%, the pension was continued. The respondents have dis-continued the disability pension on the ground that the disability has been reduced to less than 20%. Initially, the pension was granted to the petitioner as he was found suffering the disease aggravated by stress and strain of military service .

Learned counsel for the petitioner has also submitted that the disability pension cannot be dis-continued in terms of the Army Instruction No.4/S/75 issued under Notification dated 19.12.1975, which reads as under :-

> "Where an individual is invalided out of service before completion of his prescribed engagement/service limit on account of a disability which attributable to or aggravated by military service and is assessed below 20 percent, he will be granted an award equal to service element of disability pension determined in the manner given in Regulation 183 Pension Regulations for the Army, Part I(1961), read with Appendix A to AI 1/S/75. **This benefit will also be allowed in all cases where an individual is granted disability pension but whose degree of disablement subsequently falls below 20 percent."**

This Government Notification in similar facts have been considered by a coordinate Bench of this Court in case title "**Smt. Teeja Devi vs. U.O.I.**,reported in 2005(8) RDD, 3028 and held that the respondents have not extended the benefit of said circular to the petitioner. The Court while interpreting and maintaining the right of the petitioner in the said petition for his continued disability pension, observed as under :-

"8. In the instant case the disease suffered by the petitioner during and in the course of service was attributable to military service, as such the petitioner was fully entitled to disability pension and service element. In the instant case the judicial pronouncement granting service element of pension to all ex-servicemen irrespective of their date of retirement came to be pronounced during 1992 in the case of Ramroop Singh vs. Union of India, reported in 1993(III) CSJ(HC 49(Allahabad). Therefore the relief sought by the petitioner cannot be denied.

9. As already noticed the policy decision was taken during 1975 that person whose disability pension has been reduced below 20% and resultantly their disability pension had been discontinued shall be granted service element of pensions for life if the disability in question was attributable to military service or aggravated thereby irrespective of length of service. However, this decision was made effective from January 1, 1973 onwards and the persons retired prior to this cut off date were deprived of such concession. This aspect of cut off date came to be examined judicially in the case of Ramroop Singh vs. Union of India(supra), and it was held that all ex-servicemen shall be entitled to pensionary benefits regardless to their date of retirement. Ratio indicated in Ramroop Singh vs. Union of India(supra), is squarely applicable to the facts of the instant case. Further the respondents did not inform the husband of the petitioner about discontinuance of the disability pension. Since, the husband of petitioner was entitled for the pensionary benefits, the petitioner is entitled for family pension."

The case of the petitioner is similar to that of Teeja Devi vs. U.O.I.(supra) which has been decided by this Court and that judgment applies with all force.

The writ petition is accordingly allowed. The

petitioner is held entitled to the continuation of his disability pension. The respondents are directed to continue to pay the disability pension to the petitioner. The arrears shall also be paid to the petitioner within a period of four months.

(R.C.GANDHI),J.